



City of Marietta Meeting Minutes CITY COUNCIL

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

William B. Dunaway, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Holly Marie Walquist, Ward 3
Irvan A. "Van" Pearlberg, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, December 10, 2008

7:00 PM

Council Chamber

Presiding: William B. Dunaway

Present: Philip M. Goldstein, Jim King, Rev. Anthony Coleman, Holly Walquist, Grif Chalfant, Annette Lewis and Van Pearlberg

Also Present:

William F. Bruton, City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor William B. Dunaway called the meeting to order at 7:04 p.m.

INVOCATION:

Mayor Dunaway called upon Council member Philip M. Goldstein to give the invocation.

PLEDGE OF ALLEGIANCE:

Mayor Dunaway called upon Larry Ceminsky, with Cobb Housing Authority, to lead the pledge of allegiance.

PRESENTATIONS:

20081247 Swearing-in of new police officer

Swearing in of Jason Sidler, police officer.

This matter was Oath Administered.

20081501 2009 Youth of the Year Award

Recognition of Raymone Posey of the Franklin Road Weed and Seed Boys and Girls Club as 2009 Youth of the Year award recipient.

This matter was Presented.

20081506 Distinguished Service Award - Benjamin Parker

Presentation of a Distinguished Service Award to Benjamin Parker for his years of service and dedication to the City of Marietta.

This matter was Presented.

PROCLAMATIONS:**ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:**

Mayor Dunaway mentioned the upcoming performances at the Strand Theatre, highlighting the Grand Opening fundraising event January 10, 2009.

Council member Goldstein stepped out of the Council Chamber during the Mayor's announcement and returned shortly thereafter.

Holly Walquist called upon Larry Ceminsky to give details regarding the IMPACT meeting that will be held December 11, 2008 at the Fire Department meeting room.

CONSENT AGENDA:

Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Dunaway briefly explained the consent agenda process. The following amendments were made to the consent agenda:

A motion was made by Council member King, seconded by Council member Goldstein, to suspend the rules of order to add three motions to the consent agenda regarding property located at 554 Fort Street, 191 Roswell Street and 162/166 Anderson Street. The motion carried by the following vote:

Vote: 7 - 0 - 0

Approved

(See agenda items 20081520, 20081521 and 20081548)

-under Ordinances: Agenda item 20081360 was removed from the consent agenda.

-under Judicial/Legislative: Agenda item 20080725 was added to the consent agenda and amended to delete the words "Mayor and Council" from the third line from the bottom under section 1.

-under Public Works: Agenda item 20081447 was amended to read, "...right-in and right-out turn access from the northern side of Delk Road into 2265 Kingston Court for access to a public road only, which Diplomat Development Company, LLC agrees to pay for, construct and dedicate such public road, built to full city of Marietta standards from Delk Road to Kingston Court."

-under Other Business: Agenda items 20081507, 20081512, 20081508, 20081509 and 20081511 were added to the consent agenda.

Mayor Dunaway opened the public hearing for items on the consent requiring a public hearing. Seeing no one wishing to speak, the public hearing was closed.

A motion was made by Council member King, seconded by Council member Coleman, to approve the consent agenda as modified. The motion unanimously carried by the following vote:

Vote: 7 - 0 - 0

Approved

with the following exceptions:

Council member Goldstein abstained on agenda items 20081456, 20081457, 20081460, 20081482, and 20081371.

Council member Goldstein opposed to agenda items 20080725 and 20081503, 20081467, 20081502.

Council member Pearlberg opposed to agenda items 20081479, 20081433, 20081467 and 20081511.

Council member Chalfant opposed to agenda items 20081479 and 20081511.

Council member Walquist opposed to agenda items 20081511.

Council member King opposed to agenda items 20081415 and 20081579.

Council member Lewis opposed to agenda item 20081502.

MINUTES:

*

20081474 Regular Meeting - November 17, 2008

Review and approval of the November 17, 2008 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

MAYOR'S APPOINTMENTS:

CITY COUNCIL APPOINTMENTS:

ORDINANCES:

20081317 Z2008-16 Back to the Bible 601, 413, 421 and 417 Tower Road

Z2008-16 [SLUP] BACK TO THE BIBLE request Special Land Use Permit (for place of worship with accessory school) for property located in Land Lot 1076, 16th District, Parcels 0720, 0700, 1170 and 0710, 2nd Section, Marietta, Cobb County, Georgia and being known as 601, 413, 421 and 417 Tower Road and being zoned R-3. Ward 4.

Mayor Dunaway opened the public hearing regarding this matter. City Attorney Douglas Haynie explained the rules of order for public hearings and swore in those wishing to speak.

Richard Calhoun, representing Back to the Bible Church, requested a Special Land Use Permit (for place of worship with accessory school) for property located at 601, 413, 421 and 417 Tower Road and being zoned R-3. Mr. Calhoun mentioned that there were no plans to expand or make any changes to the existing footprint of the church. He also stated that there were no plans to impede on the green space adjacent to the church without prior approval from City Council.

Discussion was held regarding the request for a Special Land Use Permit.

Speakers expressing concern:

Nancy White, who resides at 641 Oakledge Drive

Kathy Kilgore, who resides at 656 Oakledge Drive

Juanita Carmichael, who resides at 1008 James Street

Floyd Northcutt, who resides at 650 Oakledge Drive

In rebuttal, Mr. Calhoun mentioned that the purchaser of the property agrees not to disturb the green space buffer adjacent to the church and agrees to abide by the plans submitted.

Further discussion was held.

Mayor Dunaway closed the public hearing.

A motion was made by Council member Pearlberg, seconded by Council member Walquist, to deny the request for a Special Land Use Permit.

A substitute motion was made by Council member Goldstein, seconded by Council member King, to approve the request for a Special Land Use Permit, with the following stipulations:

1) The use of property shall be restricted to the existing parking area and structures as built and as shown.

2) The applicant shall not use any structures not shown, nor expand any structures or build any new structures or make any improvements to the property without gaining approval from City Council.

2) The Letter of Stipulations dated December 9, 2008 shall be incorporated and the stated stipulations shall override any conflicting stipulations contained in said Letter of Stipulations.

Discussion was held regarding Code requirements for property being granted a Special Land Use Permit, specifically parking requirements.

A substitute motion was made to table this matter until the January 14, 2009 regular meeting.

The motion was made by Council member King, seconded by Council member Goldstein, that this matter be Tabled. The motion carried by the following vote:

Vote: 5 - 2 - 0

Tabled

Vote Against: Van Pearlberg and Grif Chalfant

20081360 Code Enforcement - 180 Powers Ferry Road

An ordinance authorizing the removal of overgrown grass, weeds and obnoxious vegetation, along with trash and debris, rendering sanitary property in the corporate limits of the City of Marietta, Georgia at 180 Powers Ferry Road.

Listed Owner: Bradford Frank

Certified mail receipt received 10/27/08.

Taxes paid: Yes

PUBLIC HEARING REQUIRED

Philip M. Goldstein abstaining

Mayor Dunaway opened the public hearing regarding this matter.

Frank Bradford expressed concern about the violations submitted for his property located at 180 Powers Ferry Road. Mr. Bradford asked that this matter be tabled until the January 14, 2009 regular City Council meeting.

Discussion was held regarding the violations. Council requested that the Code Enforcement officer who cited the property be present at the next meeting to answer questions and to determine if the property was indeed in compliance.

Mayor Dunaway closed the public hearing.

Motion to table this matter until the next regular City Council meeting.

The motion was made by Council member Goldstein, seconded by Council member Coleman, that this matter be Tabled. The motion carried by the following vote:

Vote: 5 - 2 - 0

Tabled

Vote Against: Van Pearlberg and Annette Lewis

* **20081456 Code Enforcement - 341 Pin Oak Court**

Ord 7276

An ordinance authorizing the removal of overgrown grass, weeds and obnoxious vegetation, along with trash and debris, rendering sanitary property in the corporate limits of the City of Marietta, Georgia at 341 Pin Oak Court.

Listed Owner: Mark J. Moorhead

Certified mail receipt received 11/26/08; signature not legible.

Taxes paid: Yes

PUBLIC HEARING REQUIRED

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 1

Approved

Abstain: Philip M. Goldstein

* **20081457 Code Enforcement - 711 Springhollow Lane**

Ord 7277 An ordinance authorizing the removal of overgrown grass, weeds and obnoxious vegetation, along with trash and debris, rendering sanitary property in the corporate limits of the City of Marietta, Georgia at 711 Springhollow Lane.

Listed Owner: I.J. Serrate

Certified mail receipt not received as of 12-01-08

Taxes paid: No; owes \$770.68 for past due taxes since 2001.

PUBLIC HEARING REQUIRED

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 1

Approved

Abstain: Philip M. Goldstein

*** 20081460 Code Enforcement - 451 Booth Circle**

Ord 7278 An ordinance authorizing the removal of overgrown grass, weeds and obnoxious vegetation, along with trash and debris, rendering sanitary property in the corporate limits of the City of Marietta, Georgia at 451 Booth Circle.

Listed Owner: Jeanette Neal

Certified mail receipt not received as of 12/01/08

Taxes paid: Yes

PUBLIC HEARING REQUIRED

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 1

Approved

Abstain: Philip M. Goldstein

*** 20081482 Code Enforcement - 95 Woods Drive**

Ord 7279 An ordinance authorizing the removal of overgrown grass, weeds and obnoxious vegetation, along with trash and debris, rendering sanitary property in the corporate limits of the City of Marietta, Georgia at 95 Woods Drive.

Listed Owner: Paul M. Menefee

Certified mail receipt not received as of 12/01/08.

Taxes paid: No, owed in the amount of \$117.81.

PUBLIC HEARING REQUIRED

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 1

Approved

Abstain: Philip M. Goldstein

RESOLUTIONS:

CITY ATTORNEY'S REPORT:

*** 20081370 Settlement Agreement with Cobb EMC**

c/a 3593 Motion to approve a Settlement Agreement and Release of Claims per the attached documents.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

- * **20081371** **Franchise Agreement with Cobb EMC**
Ord 7270 Ordinance approving a Franchise Agreement between the City of Marietta and Cobb Electric Membership Corporation per the attached document.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 1

Approved

Abstain: Philip M. Goldstein

CITY MANAGER'S REPORT:

MAYOR'S REPORT:

COMMITTEE REPORTS:

1. Economic/Community Development: Grif Chalfant, Chairperson

- * **20081435** **CDBG Action Plan Revision**
Res. 1454 Approval of a Resolution amending the FFY' 2008 and FFY'2009 CDBG Program Action Plans with Cobb County to specifically include administrative and technical support of the City's Housing Choice Voucher and Summer Food Service programs in the City's Planning And Administration CDBG Activity.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

2. Finance/Investment: Annette Lewis, Chairperson

- * **20081415** **2009 Mayors' Day Conference**
Motion to approve travel and training expenses for the Mayor and Council members who wish to attend the Georgia Municipal Association (GMA) Annual Mayors' Day Conference, January 24-26, 2009 in Atlanta, Georgia.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved

Vote Against: Jim King

- * **20081479** **National League of Cities (NLC)**

Motion to approve travel and training expenses for Mayor and Council members who wish to attend the National League of Cities (NLC) 2009 Annual Congressional City Conference in Washington, DC on March 14-18, 2009.

This Matter was Approved on the Consent Agenda.

Vote: 4 - 3 - 0

Approved

Vote Against: 3 - Jim King, Van Pearlberg and Grif Chalfant

3. Judicial/Legislative: Philip M. Goldstein, Chairperson

*** 20081368 Council Calendar**

Res 1452

Approval of a Resolution for the establishment of dates, time and place of regular Council Meetings for 2009 in accordance with O.C.G.A. Section 50-14-1(2)(d) and the Marietta City Charter Section 2.9(a), does hereby designate the following dates, time and place of the Regular City Council meeting for the calendar year 2009 on the 2nd Wednesday of each month at 7:00 p.m. with the exception of the following:
Wednesday, April 15, 2009
Monday, November 9, 2009

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081425 Change in Hotel Occupancy Tax Ordinance**

Ord 7271

Ordinance Amending Section 8-32-040 of City Code to clarify period of taxable occupancy.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081433 Municipal Court Bond Schedule**

Ord 7272

Ordinance approving the new order of Bond Schedule and Posting of Appearance Bonds in Municipal Court.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved

Vote Against: Van Pearlberg

*** 20080725 Ethics Committee Recommendation**

Ord 7280

Approval of an Ordinance amending Code Section 1-14-4-180 , Section 1, Advisory Opinions.

The ethics committee shall render an advisory opinion based on a real or hypothetical set of circumstances when requested in writing by any elected official subject to the provisions of this Code, and it shall be a responsibility of the ethics committee for the interpretation of this Code. Such advisory opinion shall be rendered pursuant only to a written request, fully setting forth the circumstances to be reviewed by the ethics committee. The proceedings of the ethics committee pursuant to this section shall be held in public, and the opinions of the ethics committee shall be made available to the public to examine and for the press to publish. The ethics committee shall dismiss any complaint filed against an elected official based upon facts or grounds for which any elected official has previously submitted and received an advisory opinion from the ethics committee that approves or renders an opinion that there is no conflict of interest based upon a real or hypothetical set of circumstances submitted by any elected official. In the event the Ethics Committee does not render an opinion following a written request by an elected official, the matter or matters which are the subject matter of the requested opinion by the elected official shall be automatically continued or delayed until such time as the Ethics Committee shall issue an opinion in response to the request. No further action shall be required of the elected official in order to have the matter or matters continued.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved as Amended

Vote Against: Philip M. Goldstein

4. Parks, Recreation and Tourism: Holly Walquist, Chairperson

*** 20081442 Bond Fund Budget Amendment**

Ord 7273

An Ordinance approving an amendment to the Fiscal Year 2009 budget to appropriate the remaining 1996 parks bond funds for professional fees associated with park improvement projects.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081452 175th Celebration**

Motion to appoint Kim Gresh and Earl Reece as Co-Chairs and Terri Bunton as an alternate for the 175th Celebration Steering Committee.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

5. Personnel/Insurance: Van Pearlberg, Chairperson

*** 20081455 City/BLW Pension Plan**

Ord 7274 Ordinance modifying the City/BLW Pension Plan to allow revisions to the vesting period for all new employees effective January 1, 2009.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

6. Public Safety Committee: Anthony Coleman, Chairperson

*** 20081432 Standard Operating Procedures of the Marietta Police Department**

Motion to approve revisions to the following Standard Operating Procedures for the Marietta Police Department: A016 Code of Ethics, A020 Deadly & Non-Deadly Force, A021 Asp Baton, A034 Budget and Fiscal Management, A036 Ride Along Program, A041 Organizational Structure, A046 GCIC NCIC & Departmental Computer Systems, A052 Detention & Housing of Detainees, A073 Building Security, E035 Critical Response Team, P010 Patrol Operations, P015 Video & Audio Recording Equipment, P020 Missing Children, P025 Mentally Ill Persons, P044 Police Vehicles, P046 Legal Process, P049 Traffic Enforcement, P050 Master Patrol Officer Program, S031 Habitual/Serious Offenders, and S045 Crime Interdiction Unit.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081467 Standard Operating Procedures of the Marietta Police Department**

Motion to approve revisions to the following Standard Operating Procedures of the Marietta Police Department: A060 Evidence & Property Maintenance.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 2 - 0

Approved

Vote Against: Van Pearlberg and Philip M. Goldstein

7. Public Works Committee: Jim King, Chairperson

*** 20081447 Diplomat Hotel Group**

Res. 1453 Approval of a Resolution endorsing the application by Diplomat Development Company, LLC, to the Georgia Department of Transportation for a right-in, right-out turn access from the northern side of Delk Road to the 2265 Kingston Court property as per drawings which includes the dedication of a public road at the right in off of Delk Road and an emergency lane extension on Delk; and for other purposes.

Section 1 should read, "The Mayor and City Council hereby endorses the application by Diplomat Development Company, LLC, to the Georgia Department of Transportation for right-in and right-out turn access from the northern side of Delk Road into 2265 Kingston Court for access to a public road only, which Diplomat

Development Company, LLC agrees to pay for, construct and dedicate such public road, built to full city of Marietta standards from Delk Road to Kingston Court."

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081300 2009 Sidewalks Project**

Motion to approve the FY2009 sidewalk project list using 2005 SPLOST funds.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

SCHEDULED APPEARANCES:

UNSCHEDULED APPEARANCES:

OTHER BUSINESS:

*** 20081502 2008 MRC Work Plan**

Motion to extend the 2008 Work Plan for the Marietta Redevelopment Corporation through and including January 15, 2009.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 2 - 0

Approved

Vote Against: Philip M. Goldstein and Annette Lewis

*** 20081499 Georgia Municipal Association Revenue Recovery program.**

Motion to approve Collection Agency Contract with Penn Credit Corporation subject to the final approval of the City Manager and City Attorney provided that the city shall not turn over any ad valorem property taxes to the agency for collection pursuant to said contract.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081503 Municipal Competitive Trust**

Motion to select the City Manager and the BLW General Manager as the officials authorized to communicate the decisions of the City of Marietta to MEAG with regard to deposits or withdrawals of any city subaccounts established by the Municipal Competitive Trust.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 1 - 0

Approved

Vote Against: Philip M. Goldstein

*** 20081395 Resolution of the Municipal Competitive Trust**

Approval of a Resolution to execute the election for participant directed voluntary deposits into the Municipal Competitive Trust for the Year 2009.

Res 1450

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

* **20081505 Off-System Energy Sales Margins for Power Supply Year 2009**
c/a 3587 Motion to execute the Election for Off-System Energy Sales Margi

Motion to execute the Election for Off-System Energy Sales Margins for the Power Supply Year 2009, applying these moneys as credits to our monthly Municipal Electric Authority of Georgia (MEAG) bill, as we have in the past.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

* **20081507 251 Roswell Street**

Motion to authorize the acquisition of property owned by Spinks Enterprises, LLLP on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

* **20081512 932 Roswell Street**

Motion to authorize the acquisition of property owned by W.A. Spinks on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

* **20081508 344 S. Fairground Street**

Motion authorizing partial acquisition of property owned by A&B Partners,

located at 344 South Fairground Street, in exchange for \$20,860 for the Roswell Street Streetscape project.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081509 219 Roswell Street**

Motion to accept donation of a portion of property from City Partners, LLP, located at 219 Roswell Street for the Roswell Street Streetscapes project.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081511 456 Roswell Street (Emerson Coffee Shop)**

Motion to accept partial acquisition of property from Emerson Overlook, LLC, for property located at 456 Roswell Street for \$300,000.

This Matter was Approved on the Consent Agenda.

Vote: 4 - 3 - 0

Approved

Vote Against: Van Pearlberg, Grif Chalfant and Holly Walquist

*** 20081520 554 Fort Street**

Motion authorizing acquisition of property owned by Alfonso Robinson, located at 554 Fort Street, in exchange for \$1,300.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

*** 20081521 191 Roswell Street**

Motion to authorize partial acquisition of property owned by Bluegrass Realty, LLC, located at 191 Roswell Street on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

* **20081548 162/166 Anderson Street**

Motion authorizing acquisition of a temporary construction easement for property located at 162/166 Anderson Street for the Roswell Street Streetscape Project.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* **20081473 BLW Actions of December 8, 2008**

Review and approval of the December 8, 2008 actions and minutes of the Marietta Board of Lights and Water Works (BLW).

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0

Approved

ADJOURNMENT:

The meeting was adjourned at 9:16 p.m.

Date Approved: 01/14/09

William B. Dunaway, Mayor

Attest: _____
Stephanie Guy, City Clerk